

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:

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PLR-143273-06

Date:

March 13, 2007

Legend

Partnership =

Trust =

Corporation =

A% =

B =

C% =

D% =

E% =

F% =

G% =

Year H =

Year J =

Dear :

This letter responds to a letter dated September 13, 2006, submitted by your authorized representatives, requesting a ruling under section 162(m) of the Internal Revenue Code ("Code"). Specifically, a ruling is requested that the deduction limitation under Code section 162(m) does not apply. The facts, as represented, are as follows.

Trust is a real estate investment trust ("REIT") and is a subsidiary of Corporation, a publicly held corporation. Corporation also is a REIT. Corporation owns A% of the outstanding voting common stock and almost all of the preferred stock of Trust. The remainder of the preferred stock of Trust is owned by B unaffiliated individuals.

Trust is the general partner of Partnership and owns C% of the outstanding common units in Partnership. Trust also owns D% of a few qualified REIT subsidiaries, as defined in Code section 856(i)(2). Trust, Corporation, and the qualified REIT subsidiaries conduct substantially all of their business activities through Partnership. Because Trust is a member of the same affiliated group of corporations as Corporation under Code section 1504 (determined without regard to Code section 1504(b)), Trust is considered a publicly held corporation for purposes of Code section 162(m).

Corporation has employees who are covered employees ("Covered Employees") within the meaning of Code section 162(m). The Covered Employees also are employees and officers of Trust and Partnership, and they receive a salary and participate in various additional compensation arrangements as employees of those entities. However, most of the compensation paid to the Covered Employees for services rendered to Corporation, Trust, and Partnership is attributable to their services with respect to Partnership, because Corporation and Trust are not operating entities. In collective terms, only between E% and F% of the services provided by the Covered Employees is in their capacity as employees of Corporation, and less than G% is in their capacity as employees of Trust. It is represented that Partnership satisfies the Code's reporting and withholding requirements with respect to all of the compensation paid to the Covered Employees, including compensation relating to services the Covered Employees provided to Corporation and Trust.

For Year H, the total compensation of one or more of the Covered Employees for services performed as an employee of Partnership was in excess of \$1 million and is not qualified performance-based compensation within the meaning of Code section 162(m). Trust expects that the total compensation for services performed by one or more of the Covered Employees in Year J and later years may exceed \$1 million per year.

Code section 162(a)(1) provides that a taxpayer may deduct all ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries and other compensation for personal services actually rendered.

Code section 162(m)(1) provides that a publicly held corporation shall not be allowed a deduction for remuneration with respect to any covered employee to the extent that the amount of such remuneration for the taxable year exceeds \$1,000,000.

Code Section 162(m)(2) defines publicly held corporation as any corporation issuing any class of common equity securities required to be registered under section 12 of the Securities Exchange Act of 1934. Section 1.162-27(c)(1)(ii) of the Income Tax Regulations ("Regulations") provides that a publicly held corporation includes an affiliated group of corporations, as defined in Code section 1504 (determined without regard to Code section 1504(b)). For purposes of Code section 162(m), an affiliated group of corporations does not include any subsidiary that is itself a publicly held corporation.

Code section 162(m)(3) defines covered employee as any employee of the taxpayer if (A) as of the close of the taxable year, such employee is the chief executive officer of the taxpayer or is an individual acting in such capacity, or (B) the total compensation of such employee for the taxable year is required to be reported to shareholders under the Securities Exchange Act of 1934 by reason of such employee being among the four highest compensated officers for the taxable year (other than the chief executive officer). Section 1.162-27(c)(2)(ii) of the Regulations generally provides that whether an individual is a covered employee for purposes of section 162(m) is determined pursuant to the executive compensation disclosure rules under the Exchange Act.

Code section 1504(a) defines affiliated group to mean one or more chains of includible corporations connected through stock ownership with a common parent corporation if the common parent directly owns 80 percent of the total voting power of the stock and has a value equal to at least 80 percent of the total value of the stock of the corporation.

Based on the information submitted, we rule that:

1. The deduction limitation of Code section 162(m) does not apply to Partnership with respect to remuneration paid to a Covered Employee as compensation for services performed by the Covered Employee as an employee of Partnership.
2. The deduction limitation of Code section 162(m) does not apply to Trust with respect to its distributive share of income or loss from Partnership that includes the compensation expense of Covered Employees to the extent such compensation expense is attributable to services performed by the Covered Employees as employees of Partnership.

Except as specifically ruled on above, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In this regard, note that we specifically express no opinion concerning the allocation of the compensation between Partnership and Corporation or Trust.

This ruling is directed only to the taxpayer who requested it. Code section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

KENNETH M. GRIFFIN
Senior Technician Reviewer
Executive Compensation Branch
Office of the Division Counsel/Associate Chief
Counsel (Tax Exempt and Government Entities)